

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: 5:09-CR-00040-BR

UNITED STATES OF AMERICA

v.

PHILIP JOE GUYETT JR.

ORDER

This matter is before the court on defendant's *pro se* motion for a reduction in his term of imprisonment pursuant to Federal Rule of Civil Procedure 60(b). (DE # 57.) This rule is not applicable to criminal proceedings. See United States v. Grapes, 408 F. App'x 766, 767 (4th Cir. 2011) ("The Federal Rules of Civil Procedure do not provide a vehicle by which [a defendant] may challenge his criminal judgment." (citations omitted)). Under certain circumstances Rule 60(b) is the appropriate vehicle for asserting a challenge in a habeas corpus proceeding. See United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003). Here, however, defendant has not filed a habeas corpus motion. Therefore, defendant's reliance on Gonzalez v. Crosby, 545 U.S. 524 (2005), is misplaced. See Canty v. United States, No. 4:01-cr-0445-CWH-1, 2013 WL 504237, at *3 (D.S.C. Feb. 8, 2013) ("In contrast to *Gonzalez*, [the defendant] never filed a federal habeas petition in this case, and thus, his Rule 60(b) motion cannot be construed as challenging a defect in the integrity of prior habeas proceedings."). The motion to modify defendant's sentence is DENIED.

This 13 June 2013.



W. Earl Britt
Senior U.S. District Judge